



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1995

Mr. Edward W. Dunbar  
Dunbar & Barill, L.L.P.  
1700 North Stanton  
El Paso, Texas 79902

OR95-946

Dear Mr. Dunbar:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33069.

The El Paso County Community College District (the "college") received a request for information filed by the college with the Equal Employment Opportunity Commission ("EEOC"), in response to a complaint filed against the college. You contend that these records, which were submitted to this office for review, are excepted from disclosure under section 552.103(a). To show the applicability of the section 552.103(a) exception, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have provided information showing that one of the college's employees (the "charging party") filed a complaint of sexual discrimination with the EEOC. This office has held that litigation is reasonably anticipated when an EEOC complaint is pending. Open Records Decision Nos. 386 (1983), 336 (1982). Our review of the information submitted to this office shows that it is related to the anticipated litigation. You have therefore demonstrated the applicability of section 552.103(a) to these records.

However, we note that the charging party has already had access to some of the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Since the charging party has already seen or had access to some of the

information in these records, there is no justification for now withholding that information pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. However, some of the information in the records submitted to this office is confidential and may not be released even if the charging party has seen the information or the litigation has concluded.

The information at issue includes employee home addresses and home telephone numbers. The college must withhold the home addresses and telephone numbers of each employee who has opted not to disclose that information, as provided under sections 552.117 and 552.024 of the Government Code. These sections protect from public access both current and former home addresses and home telephone numbers of governmental employees who have chosen to keep this information private. Open Records Decision No. 622 (1994) at 5-6. You must withhold the home addresses and home telephone numbers of employees who, as of the time of the request for this information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5.

The information also discloses employees' social security numbers. Social security numbers may be confidential. Prior to releasing any social security number the college should be sure that this information was not obtained or maintained by the college pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994) at 4. It is a felony offense to disclose a social security number in violation of federal law. 42 U.S.C. § 408(a)(8). Section 552.352 of the Government Code also imposes criminal penalties for release of confidential information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information under the common-law privacy test set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. In Open Records Decision No. 373 (1983) at 3, this office considered personal financial information and concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

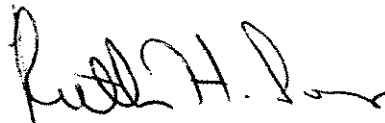
Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.*

Information showing that an employee is participating in a group insurance program funded wholly or partly by the governmental body constitutes information about a financial transaction between the employee and the governmental body. Open Records Decision No. 600 (1992) at 9. Such information is not confidential. *See id.* Similarly, information about an employee's choice of social security levelling is basic factual information about a transaction between the employee and the governmental body, and it is not confidential. *Id.* at 10. On the other hand, an employee's decision to enroll in optional insurance coverages, funded wholly by the employee, is information regarding a personal financial decision, and such information is confidential. *Id.*; *see also* Open Records Decision No. 545 (1990) at 3-4 (concluding that information regarding employee's participation in optional deferred compensation plan involves personal investment decision and is therefore confidential).

The Medical Practice Act, makes confidential "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Several records submitted to this office are medical records made confidential by that provision. Open Records Decision Nos. 600 (1992), 455 (1987). There also appear to be other types of records of an employee's medical condition and history at issue. Whether records of an employee's medical condition and history are confidential is the subject of a pending open records decision, RQ# 753. Until that decision is issued, you may withhold these records.

Because you have shown the applicability of section 552.103(a), you may withhold all of the records that the charging party has not seen. Although we have not marked all of the records that are confidential, we have marked some confidential information as a sample to show the type of information that is confidential as discussed above. We have also marked a sample of the type of information that may be withheld pending the issuance of RQ# 753. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 33069

Enclosures: Marked documents

cc: Mr. Mario Lewis  
Rodriguez, Lewis & Collins  
1220 Montana Avenue  
El Paso, Texas 79902  
(w/o enclosures)